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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1144

WORLD WIDE TELEVISION CORPORATION, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

The Federal Trade Commission issued a complaint charging petitioners with violating Section 5 of the Federal Trade Commission Act by misrepresenting in their advertising the terms of sale, financing, service and guaranty of television sets (App. 2a–12a).[1] Petitioners stipulated the basic facts, and waived a hearing (App. 16a–22a). The facts are as follows:

Under petitioners' "Metermatic" sales plan, which is aimed particularly at low income families, the purchaser pays for the set by depositing coins in a meter attached at the back (App. 29a, 40a–41a).

[1] "App." refers to the "Appendix For Petitioners" in the court of appeals.

Petitioners' advertising used such terms as "No money down"; "* * * just 25 cents a day"; "No banks, no finance companies!"; "That meter keeps the bill collectors away"; "Service guarantee included!"; "* * * FULL ONE YEAR GUARANTEE including picture tube" (App. 28a–29a).

In fact, the purchaser was required to sign a conditional sales contract providing for 24 monthly payments of approximately $20 each, which petitioners' employees collected from the meter twice a month (App. 19a–20a). If meter deposits fell short of the contract requirements, the balance was recovered through customary collection procedures, including the use of bill collectors and repossession (App. 20a, 50a, 52a). The total purchase price of $480 included a two-year service contract charge of $130 (App. 20a). Petitioners did not give a guaranty of the set, but furnished only the manufacturer's conditional warranty (App. 20a–21a). Although petitioners advertised that there was no down payment, when the set was delivered the purchaser was required to pay an initial sum of $15 to $20 denominated as a "delivery charge," "sales tax" or "deposit on the meter" (App. 19a); this payment was not applied against the purchase price (App. 45a–46a). If the purchaser regularly deposited the stipulated sums for 24 months, the meter was removed and the set became his.

On the basis of the admitted facts, the Hearing Examiner found that petitioners' advertising was false, misleading, and deceptive, and concluded that

a cease-and-desist order should issue (App. 23a–37a).

Petitioners appealed the initial decision to the Commission, which, after reading the briefs and studying the record (App. 56a), heard oral argument. During the argument petitioners' counsel was closely questioned (App. 38a–56a). At the close of petitioners' argument, the Commission recessed for a few minutes (App. 56a). Upon its return, the Chairman stated that there was no need for argument by Commission counsel (App. 56a). He then announced that the Commission had adopted the Examiner's initial decision, handed the Commission's Secretary a copy of its cease-and-desist order and directed that it be served forthwith upon petitioners' counsel (App. 56a–57a).

Upon petition for review to the Court of Appeals for the Third Circuit, petitioners contended, *inter alia*, that the brevity of the Commission's deliberations and the fact that it returned from recess with a typed final order showed that it had denied them due process by deciding the case in advance of oral argument. The court affirmed the Commission's order in a brief *per curiam* opinion (Pet. 7–9). Petitioners sought rehearing on the ground that the court had not discussed or disposed of their due process point (Pet. 4). The court denied the petition, stating: "The petition for rehearing again presents an unimportant point which was thoroughly considered and disposed of by the court though not specifically mentioned in the per curiam opinion" (Pet. 10).

The only question presented is whether petitioners were denied due process by the Commission's prompt disposition of their appeal to it. The court of appeals correctly rejected this minor contention, and it presents no issue warranting further review. The record shows that in the light of its prior examination of the briefs and the record, the Commission upon the close of petitioners' arguments was able immediately to conclude that the examiner had decided the case correctly (Pet. App. 56a). Due process requires no more deliberation than is necessary to dispose of the case. The Commission's quick decision simply reflected the fact that there was no merit in petitioner's contentions, which had not refuted the obviously deceptive character of their sales plan.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JAMES McI. HENDERSON,
General Counsel,
Federal Trade Commission.

APRIL 1966.

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